

Sec. 1-201

The former DoD position that the new Order should provide specifically for the establishment of the NFIB and NFIC, and specify their membership and responsibilities, is withdrawn in consideration of the D/DCI assurance that information comparable to what is set forth in the DCI memorandum of 9 March 1981, "Establishment of DCI Advisory Board and Council," will be promulgated as a new DCID.

Sec. 1-301(i) and (j)

These sections extend the DCI role considerably beyond what is provided in Section 1-601(i) and Section 1-604 of EO 12036, and would intrude the DCI directly into the responsibilities of the Secretary of Defense for the management of DoD.

No reason for such a significant extension of the DCI role has been demonstrated. The argument has been made that the DCI would seek to eliminate "leaks" of classified information. Defense considers the attack on this problem should focus on legislation that would provide both criminal and administrative penalties for unauthorized disclosure of classified information.

Defense recommends that the present language of Section 1-601(i) and Section 1-604 of EO 12036 be retained without change, making what is now Section 1-604 a lettered paragraph in the listing of DCI responsibilities.

If this is not acceptable, the following language is proposed for the new Section 1-301:

"(i) Provide policy and guidance [Establish,] with the advice of the Intelligence Community, and technical assistance for the development of [common] security standards and procedures to govern [all] individuals and entities having access to or that distribute national foreign intelligence [and counterintelligence], provided that such policy and guidance [standards] shall not preclude any department or agency from imposing higher security standards or from complying with specific statutory requirements applicable to that department or agency."

"(j) Provide policy, guidance and technical assistance, [Develop] in accordance with applicable law and restrictions contained in this Order, for the protection of [specific means to protect] intelligence sources and methods from unauthorized disclosure, including policy and guidance concerning the establishment of minimum standards and procedures to govern [all] individuals and entities having access to or that distribute information that would reveal these sources and methods."

On file OSD release instructions apply.

This section needs to be amended to ensure a smooth transition from peacetime to wartime operations to ensure that when the President so directs the Secretary of Defense can accomplish his wartime responsibilities as the "number two" person in the NCA.

Section 1-301(q) should be amended as indicated by the underlined addition:

"(q) Establish mechanisms to translate national foreign intelligence objectives and priorities developed by the NSC into specific guidance for the Intelligence Community, and ensure [in consultation with the Secretary of Defense] that such mechanisms are fully responsive to the needs of the Secretary of Defense in the conduct of military operations including the development of plans and arrangements for transfer of control of tasking authority to the Secretary of Defense when directed by the President."

Sec. 1-301(s)

This section omits the provision for appeal contained in Section 1-503 of EO 12036. It should be amended as indicated:

"(s) Resolve conflicts of tasking priority in national foreign intelligence activities, with recognition that any department head may seek review of such resolution by appeal to the NSC;

Sec. 1-301(y)

This section should be amended and should appear both in Section 1-301 and also in Section 1-911, where it appeared in EO 12036 among the responsibilities of the Secretary of Defense. If it is to appear at only one place in the Order, it should be at Section 1-911.

The phrase "and intelligence-related activities" was not in EO 12036 (Section 1-1111) and should not be in the new Order. The program and budget for IRA activities are a Defense Department responsibility.

"(y) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs [and intelligence-related activities], and provide to and obtain from the Secretary of Defense all information necessary for this purpose."

Sec. 1-604

The word "all," which was not in the comparable Section 1-804 of EO 12036, should be deleted. The Military Services conduct low-level defensive counter-intelligence activities, the volume of which in areas such as West Germany where large numbers of US troops are stationed, precludes case-by-case coordination with CIA. These activities do not fall within the "personnel security

programs" excluded in the Order [by] the definition of "counterintelligence."
Section 1-604 should read:

"1-604. Conduct counterintelligence activities outside the United States and coordinate [all] counterintelligence activities conducted outside the United States by other departments and agencies;"

Sec. 1-607

The proposed rewording of Section 1-807 is confusing since the collection of information "not otherwise obtainable" has heretofore been meant to apply to collection "by clandestine means." The wording now in EO 12036 should be retained as follows:

"1-607. Coordinate the collection outside the United States of intelligence information [by clandestine means and coordinate the collection outside the United States of intelligence information] not otherwise available."

Sec. 1-911

The following should be inserted as a new section in the Order, replacing Section 1-1111 of EO 12036 which was deleted in the redrafting of the Order:

"1-911. Together with the Director of Central Intelligence, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs and provide to and obtain from the Director of Central Intelligence all information necessary for this purpose."

Section 1-911 as proposed above, and Section 1-301(y), as drafted for the new Order, are reciprocal. If a paragraph of this nature is to appear at only one place, it should be at Section 1-911.

Sec. 1-912

This section should be amended as indicated since Section 1-301(g) provides that the DCI shall "formulate policies concerning intelligence relationships with foreign governments."

--"1-912. Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies [and procedures] formulated by the Director of Central Intelligence."

This is a section proposed by NSA, but the NSA wording has been altered and, as written, Section 1-1002(1) would make NSA activities in the communications security field, which are not intelligence activities, subject to DCI policies and procedures. The section should read:

"1-1002(1). Conduct of foreign cryptologic liaison for intelligence purposes [relationships] in accordance with policies [and procedures] formulated by the Director of Central Intelligence."

Section 1-301(g) provides that the DCI shall "formulate policies concerning intelligence relationships with foreign governments."

Sec. 1-301(o)

"Have full responsibility for production and dissemination of national foreign intelligence and authority to levy analytic tasks on departmental intelligence organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are fully considered and that differences of judgment within the Intelligence Community are brought to the attention of policymakers."

(The proposed amendment directly addresses a concern expressed by the Assistant to the President for National Security Affairs in his memorandum to the DCI on revision of EO 12036.

The amendment also reflects the DCI's remarks at his speech to the Chamber of Commerce of the United States on 28 April 1981.)

Sec. 1-301(t)

"Provide guidance for National Foreign Intelligence Program and budget development to Intelligence Community program managers, heads of component activities, and department and agency heads;"

(Section 1-402 provides that "heads of component activities" are to develop and submit programs and budgets to the DCI, so they also should be recipients of guidance, as is presently provided in Section 1-602(b) of EO 12036.)

Sec. 1-301(u)

"Develop, in consonance with NSC guidance, and with the advice of the program managers and the departments and agencies concerned, the National Foreign Intelligence Program budget, and present it to the President through the Office of Management and Budget."

(Addition of reference to NSC guidance recognizes that even though the new Order does not treat with the specific mechanisms to be established in the NSC structure to handle intelligence matters, there will be an NSC role in guidance for the NFIP budget.

The reference to program managers is added because deletion of the EO 12036 phrase "with the advice of the NFIB" from Sec. 1-602(c) affects program managers who were NFIB participants but who, in DoD, are not all agency heads.)

Sec. 1-509

"Report to the Intelligence Oversight Committee of the President's Foreign Intelligence Advisory Board and keep the Director of Central Intelligence

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appropriate activities of their organizations which raise [serious] questions of legality or serious impropriety [propriety]."

(Eliminates the impression some illegality is not serious.)

Sec. 1-902

"Collect, produce and disseminate foreign military and military-related intelligence information, including scientific, technical, political, biographic, geographic and economic information as required for execution of the Secretary's responsibilities."

(The DoD collects biographic information.)

Sec. 1-903

"Conduct programs and missions necessary to fulfill national, departmental, and tactical foreign intelligence requirements."

(The DoD has all three such programs and missions.)

Sec. 1-905

"Direct, operate, control and provide fiscal management for the intelligence components of the Department of Defense; [National Security Agency, and for defense and military intelligence and national reconnaissance entities]."

(This says the same thing in half the number of words.)

Sec. 9-111

"Protect the security of Department of Defense installations, activities, property, information and employees [personnel] by appropriate means, including such investigations of applicants, employees, contractors and other persons with similar associations with the Department of Defense as are necessary."

(This matches Sec. 1-911 with the comparable Sec. 1-611 on CIA.
"Employees" is a defined terms in the Order and "personnel" is not.)

Sec. 1-1001(c)

"Coordination of all Department of Defense [foreign] intelligence collection requirements."

(Insertion of "foreign", which was not in Section 1-1201(c) of EO 12036, eliminates the DIA role in counterintelligence.)

"Protection of the security of its installations, activities, property, information and employees [personnel] by appropriate means including such investigations of applicants, employees, contractors and other persons with similar associations with the NSA as are necessary."

(With these changes, the charges in Sec. 1-611 on CIA, Sec. 1-911 on the Secretary of Defense and Sec. 1-1002(j) employ the same words. "Employee" is a defined term in the Order while "personnel" is not.)

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Sec. 2-~~203~~

This section is confusing. It should be reworded and still attain the same end, as follows:

"2-203. Electronic, optical or mechanical monitoring. Electronic, optical or mechanical devices may be used to monitor persons within the United States in circumstances where a warrant would be required for law enforcement purposes, only in accordance with the Foreign Intelligence Surveillance Act of 1978. The use of such devices to monitor persons in the United States where no warrant would be required for law enforcement purposes, as well as the use of such devices to monitor United States persons outside the United States, shall be governed by procedures established pursuant to Section 2-201."

*- not necessary
- must*

(Adoption of this language would enable deletion of the material set off in parentheses in the proposed new Section 2-206, "Physical Surveillance".)

Sec. 2-309(a)

"Cooperation with appropriate law enforcement agencies for the purpose of protecting the employees [personnel], information, property and facilities of any agency within the Intelligence Community;"

OK

(See the note on Sec. 1-1002(j) above.)

Sec. 3-103(a)

"Review periodically the practices and procedures of the Inspectors General and General Counsel with responsibilities for agencies within the Intelligence Community for discovering and reporting to the IOC intelligence activities that raise [serious] questions of legality or [and] serious impropriety [propriety] and consider written and oral reports submitted by Inspectors General and General Counsel [them] concerning such activities;"

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(Clarity.)

"Transmit timely reports to the IOC concerning any intelligence activities that come to their attention and that raise [serious] questions of legality or serious impropriety [propriety];"

(This reflects discussion at the IG-I meeting of 7 May. The same changes should be made in Secs. 3-202, 3-304 and 3-205.)

Sec. 4-104 (last sentence)

"Liaison by DEA with intelligence and internal security services of foreign governments will be conducted in accordance with procedures established by the Director of Central Intelligence."

Sec. 4-207(c)

"The Defense Intelligence Agency (DIA);"

(To be consistent with the style of 4-207(a) and (b).)

Sec. 4-207(f)

"The intelligence elements of the Army, Navy, Air Force and Marine Corps [military services], the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and"

(More definitive.)

Sec. 4-209(b)

"Appears intended to endanger a protectee of the Secret Service, [or] the Department of State, or other Federal department or agency. or to further political, social or economic goals...." (Balance unchanged.)

(Completeness.)

Sec. 4-212

"Special activities means activities conducted in support of national foreign policy objectives abroad, [are not planned to influence US public opinion or policies and] which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and which are not intended to influence US public opinion or policies, including [and] functions in support of such activities, but not including diplomatic activity or the collection and production of intelligence or related support activities."

(Clarity.)

"For purposes of collection of information by any technique for which a warrant would be required if undertaken for law enforcement purposes, and the dissemination and retention of such information, a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association organized in the United States or substantially composed of United States citizens or aliens lawfully admitted for permanent residence, or a corporation incorporated in the United States, except a corporation openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments; or"

(Make the phrase in the sixth line comparable with that in the fourth line.)